

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PRATAP G. LINGAM,

Plaintiff-Appellant,

v

NEELIMA ARURU, f/k/a NEELIMA LINGAM,

Defendant-Appellee.

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UNPUBLISHED

May 8, 2014

No. 315598

Berrien Circuit Court

LC No. 12-002829-DC

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NEELIMA ARURU, f/k/a NEELIMA LINGAM,

Plaintiff-Appellee,

v

PRATAP G. LINGAM,

Defendant-Appellant.

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No. 315665

Berrien Circuit Court

LC No. 12-003153-DC

Before: METER, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

In these consolidated appeals involving the custody of a minor child, Pratap G. Lingam (father) appeals as of right the March 18, 2013, order denying relief from an October 18, 2012, order confirming the registration of a foreign custody order obtained by Neelima Aruru (mother). After the filing of father's brief on appeal, the foreign custody order was vacated and the Indian court that entered the order determined that it lacked jurisdiction in this matter. Based on these new facts, we remanded to the trial court to permit father to move for relief from the March 18, 2013, order. The trial court denied the motion for relief from judgment. Because we find that the trial court abused its discretion in denying father's motion for relief from judgment, we reverse and remand.

Father and mother, both citizens of India, were married on March 27, 2004, in Hyderabad, India. Thereafter, they moved to the United States and had one child together; the child is a United States citizen. In November 2008, father, mother, and the child moved to Michigan, where they lived until October 2009. In October 2009, the family went to India to

attend the wedding of a family member. Father returned home in November 2009. Mother originally promised to return with the child in March 2010. However, rather than return, mother elected to stay in India with the child and filed for divorce from father in March 2010. On November 15, 2010, mother obtained a divorce from the Family Court in Hyderabad. The Indian divorce order neither identified the parties' child nor determined custody of the child.

The child lived with mother in India until approximately April 2011, at which time he traveled with his grandparents to Illinois to visit relatives. On or about May 14, 2011, father, who lived in Berrien County, Michigan, learned that the child was in Illinois, and after consulting with law enforcement, father took custody of the child. Thereafter, the child has lived with father in Michigan.

On May 27, 2011, father filed for divorce and custody in the Berrien Circuit Court. The action was dismissed for lack of subject-matter jurisdiction because mother had already obtained a divorce from father in India. We subsequently affirmed that decision. *Lingam v Lingam*, unpublished opinion per curiam of the Court of Appeals, issued September 11, 2012 (Docket No. 310012).

On August 26, 2011, mother began a custody proceeding in the Family Court of Hyderabad. On May 1, 2012, before an order was entered in that case, father filed a complaint in the Berrien Circuit Court for declaratory relief and a custody determination in Michigan. The next day, May 2, 2012, the Indian Family Court entered an order awarding custody to mother. The order required father to return the child to mother in India.

On June 14, 2012, mother registered the May 2, 2012, Indian custody order in accordance with the Uniform Child-Custody Jurisdiction and Enforcement Act, (UCCJEA), MCL 722.1101 *et seq.* As set forth in MCL 722.1105(2), “[e]xcept as otherwise provided in subsection (3),<sup>[1]</sup> a child-custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under article 3.” Article 3 of the UCCJEA sets forth, among other matters, the procedures for challenging a foreign custody order. See MCL 722.1304(4). The means for challenging a registered custody determination are set forth as follows:

A person seeking to contest the validity of a registered child-custody determination must request a hearing within 21 days after service of the notice under subsection (2). At that hearing, the court shall confirm the registered child-custody determination unless the person contesting registration establishes 1 of the following:

- (a) The issuing court did not have jurisdiction under article 2.

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<sup>1</sup> Subsection 3 states that “[a] court of this state need not apply this act if the child-custody law of a foreign country violates fundamental principles of human rights.”

(b) The child-custody determination sought to be registered has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2.

(c) The person contesting registration was entitled to notice in the proceedings before the court that issued the child-custody determination for which registration is sought, but notice of those proceedings was not given in accordance with the standards of section 108. [MCL 722.1304(4).]

Father subsequently objected to the registration of the Indian custody order under MCL 722.1304(4), arguing that the Indian Family Court lacked jurisdiction under Indian law to enter the order, that the Indian custody order had been stayed, that the Indian Family Court failed to substantially comply with the jurisdictional requirements of the UCCJEA, and that the Indian Family Court denied him notice and an opportunity to be heard. Further, he argued that the Indian Family Court lacked personal jurisdiction over him and that the court violated the child's due-process rights.

Following a hearing and extensive briefing by the parties, the trial court confirmed registration of the May 2, 2012, Indian custody order on October 18, 2012. The trial court held that father failed to establish that the Indian Family Court did not have jurisdiction consistent with the requirements contained in the UCCJEA, that the Indian custody order had been vacated or stayed, or that he did not receive notice of the Indian custody proceedings. The trial court ordered father to return the child to mother in India "no later than November 15, 2012."

On November 7, 2012, father moved the trial court for relief from the October 18, 2012, opinion and order, essentially asserting the same arguments he raised earlier. On March 18, 2013, the trial court denied father's motion for relief from judgment, but modified its October 18, 2012, order by eliminating the provision that required father to return the child to mother in India. The trial court found that this provision of the order was premature because mother had not yet sought enforcement of the registered Indian custody order.

Thereafter, father appealed as of right the March 18, 2013, order. After the filing of his appellate brief in this case, father moved this Court for peremptory reversal, arguing that the May 2, 2012, Indian custody order had been vacated. We denied the motion, but remanded to the trial court to permit father to file a motion for relief from judgment and directed the trial court to hear and decide the matter. *Lingam v Aruru*, unpublished order of the Court of Appeals, entered September 6, 2013 (Docket No. 315598); *Aruru v Lingam*, unpublished order of the Court of Appeals, entered September 6, 2013 (Docket No. 315665).

On remand, father produced a June 14, 2013, order from the Indian High Court of Judicature of Andhra Pradesh at Hyderabad that vacated the May 2, 2012, custody order entered by the Indian Family Court. In pertinent part, the June 14, 2013, order of the Indian High Court reversed the order of the Indian Family Court because it found that father was denied the opportunity to participate in the custody proceedings. The court remanded to the Indian Family Court, directing that the matter "be taken up afresh." In light of this order, father argued that, pursuant to MCR 2.612(C)(1), he was entitled to relief from the trial court's October 18, 2012,

and March 18, 2013, orders because there was no longer a valid foreign custody order that could be registered and confirmed in Michigan.

After the filing of father's motion in the trial court, the Indian Family Court, on remand, determined in a November 1, 2013, order that it lacked jurisdiction to hear mother's custody action. The Indian Family Court reasoned that because the child was a citizen of the United States, it lacked jurisdiction, under Indian law, to decide mother's request for custody. As such, the Indian Family Court dismissed the custody action. There is no evidence that the November 1, 2013, order of the Indian Family Court finding a lack of jurisdiction has been stayed pending any further appeal.

Following a hearing and the filing of several briefs by both father and mother, the trial court in the case at bar ruled that father was not entitled to relief from the March 18, 2013, order.

The dispositive issue before this Court is father's claim that the trial court abused its discretion in entering the March 18, 2013, order denying him relief from judgment. "This Court reviews . . . a trial court's decision whether to set aside a prior order or judgment under MCR 2.612(C)(1) . . . for an abuse of discretion." *CD Barnes Assoc, Inc v Star Heaven, LLC*, 300 Mich App 389, 421-422; 834 NW2d 878 (2013). The trial court's decision will only be reversed if it fell outside the range of principled outcomes. *Id.* at 422. Resolution of this issue requires interpretation and application of the UCCJEA. "This Court . . . reviews de novo whether the trial court correctly selected, interpreted, and applied the relevant statutes." *Kincaid v Cardwell*, 300 Mich App 513, 522; 834 NW2d 122 (2013).

MCR 2.612(C)(1) provides:

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

In denying father's motion for relief from judgment, the trial court acknowledged that the May 2, 2012, Indian custody order had been vacated, but found that father was not entitled to

relief because his only recourse under the UCCJEA would be to wait until mother attempted to enforce the now-vacated order and oppose the enforcement. Essentially, the trial court found that the UCCJEA, which contains a separate provision for enforcing registered and confirmed custody orders, limited father's means of obtaining relief, and that the UCCJEA did not permit the court to set aside the October 2012 order confirming registration of the now-vacated Indian custody order. In reaching this decision, the trial court did not cite any provisions of the UCCJEA.

The trial court's interpretation of the UCCJEA was erroneous because nothing in the plain language of the act limits father's ability to obtain relief from the trial court's order confirming registration of the foreign custody order. Mother wants this Court to find that MCL 722.1307(4)(b) limits the remedy available to father. [The trial court did not expressly refer to MCL 722.1307(4)(b), but appears to have adopted mother's argument.] MCL 722.1307 governs a party's ability to enforce a confirmed custody order, as well as the opposing party's ability to challenge the enforcement of that order. MCL 722.1307(4) provides:

An order issued under subsection (3) [the subsection for petitions to enforce confirmed custody determinations] must state the time and place of the hearing and must advise the respondent that at the hearing the court will order the delivery of the child and the payment of fees, costs, and expenses under section 311, and may schedule an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes either of the following:

\* \* \*

(b) The child-custody determination for which enforcement is sought was registered and confirmed under section 304, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under article 2 or federal law.

Contrary to mother's assertions, nothing in the plain language of MCL 722.1307(4)(b) states that a confirmed custody determination that has been subsequently vacated can only be challenged after a motion to enforce the determination has been filed. Rather, the plain language of the statute provides that when enforcement is sought of a child-custody determination that has subsequently been vacated, the opponent of the enforcement petition can defeat the petition by establishing that the child-custody determination was vacated by the issuing court. Notably absent from this provision, as well as any other provision in the UCCJEA, is a limitation on the ability of the trial court to set aside a registered and confirmed custody order under MCR 2.612 on the basis that that order has subsequently been vacated. We will not read into MCL 722.1307(4)(b) such a preclusion when the Legislature did not see fit to do so. See, generally, *Mich Basic Prop Ins Ass'n v Office of Fin & Ins Regulation*, 288 Mich App 552, 560; 808 NW2d 456 (2010). Consequently, the position that the UCCJEA limits the ability of father to have a confirmed and registered foreign custody order set aside by the trial court has no merit.

Moreover, the provision of the UCCJEA that limits challenges to confirmed and registered orders, MCL 722.1304(6), does not exclude the type of challenge raised by father in the case at bar. Under MCL 722.1304(6), a challenge to a confirmed custody order is only

precluded “with respect to a matter that could have been asserted at the time of registration.” The statute does not preclude any other type of challenge, and this Court must “not read into the law a requirement that the lawmaking body has seen fit to omit.” *Mich Basic Prop Ins Ass’n*, 288 Mich App at 560 (internal citation and quotation marks omitted). The type of challenge asserted by father, i.e., that the registered and confirmed foreign custody order has subsequently been vacated by the Indian court that issued the order, was not a challenge that could have been asserted at the time of registration. At the time of registration, the order had not yet been vacated.

Because the UCCJEA does not preclude father’s challenge to the confirmed and registered May 2, 2012, custody determination, the trial court abused its discretion in denying father’s motion for relief from judgment. MCR 2.612(C)(1)(e) provides that the trial court “may relieve a party . . . from a final judgment, order, or proceeding” if, as relevant to this appeal, “a prior judgment on which it is based has been reversed or otherwise vacated[.]” The prior judgment on which the trial court’s confirmation of the child-custody order was based was the May 2, 2012, Indian custody order. That order was later vacated. Under MCR 2.612(C)(1)(e), father was entitled to relief from judgment from the order confirming the subsequently vacated foreign custody order. The trial court abused its discretion in denying father’s motion because of its erroneous interpretation of the UCCJEA and its conclusion that the UCCJEA did not permit father to challenge a child-custody determination once it had been confirmed. See *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009) (court abuses its discretion when it makes an error of law).

Next, father argues that the Berrien Circuit Court should hear his complaint for custody, rather than deferring jurisdiction to the Indian court. At the time father initiated his May 1, 2012, complaint for custody, he acknowledged mother’s request for custody in India, but nevertheless asked the Berrien Circuit Court to determine custody. MCL 722.1206 provides, in part:

(1) Except as otherwise provided in section 204 [dealing with temporary emergency orders], a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under section 207.

(2) Except as otherwise provided in section 204, before hearing a child-custody proceeding, a court of this state shall examine the court documents and other information supplied by the parties as required by section 209. If the court determines that, at the time of the commencement of the proceeding, a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the child-custody proceeding.

The trial court declined to determine whether jurisdiction was appropriate in Michigan consistent with MCL 722.1206 because, immediately after father filed his complaint for custody, the Indian Family Court granted custody to mother. The trial court correctly determined that upon receipt of that order, mother was entitled to seek registration and enforcement of the foreign custody order under MCL 722.1303 and MCL 722.1304. However, as the case currently stands, there is no foreign custody order because it was subsequently vacated. Moreover, the record supports that there is no longer an Indian custody proceeding that has been commenced because the Indian Family Court, in its November 1, 2013, order, ruled that it did not have jurisdiction to hear mother's petition for custody. The simultaneous jurisdiction provision found in MCL 722.1206(1) expressly does not apply where a child-custody proceeding in another state "has been terminated[.]" Thus, the simultaneous-jurisdiction analysis set forth in MCL 722.1206 does not apply in this case, and the trial court should hear father's complaint. In reaching this conclusion, we note that there is no evidence in the record that the November 1, 2013, order of the Indian Family Court has been stayed pending any alleged appeal. As such, on the record before this Court, the Indian custody proceeding has been terminated, and there is no barrier under MCL 722.1206 to the trial court's hearing father's complaint for custody.

Next, we reject father's request for a temporary interim custody order and direct the trial court instead to decide this request. Finally, because we find that father was entitled to relief from judgment based on the setting aside of the May 2, 2012, Indian custody order, we need not decide the remainder of the issues raised in father's brief. See, e.g., *Thomas M Cooley Law School v Doe I*, 300 Mich App 245, 270-271; 833 NW2d 331 (2013) (Court declined to rule upon a matter unnecessary for disposition of case).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter  
/s/ Peter D. O'Connell  
/s/ Douglas B. Shapiro